

**Minutes
of the
Fourth Meeting
of the
Los Alamos National Laboratory Oversight Committee
October 15, 2004
State Capitol**

The fourth meeting of the Los Alamos national laboratory (LANL) oversight committee was called to order on October 15, 2004 at 9:05 a.m. by Representative Roberto "Bobby" J. Gonzales, co-chairman, in room 309, state capitol.

Present were:

Rep. Roberto "Bobby" J. Gonzales, co-chairman
Sen. Phil A. Griego, co-chairman
Rep. Thomas A. Anderson
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Absent were:

Sen. William E. Sharer

Advisory Members:

Rep. Ben Lujan
Sen. Richard C. Martinez
Sen. Jeannette O. Wallace

Sen. William H. Payne

Staff:

Jonelle Maison
Sarah Salazar

Guests: The guest list is in the meeting file.

Copies of all written materials provided to the committee are in the meeting file.

Minutes of the third meeting were approved as submitted.

Laboratory Work Force Issues — Rich Marquez, Associate Director for Administration, LANL

Mr. Marquez presented written testimony on several issues pertinent to the committee's focus for the year, including updates on the resumption of operations at the lab, the contingent worker project, the Welch salary analysis, equal employment-diversity efforts and community relations. LANL characterizes its activities by three levels: level 3 is the highest risk and includes nuclear and high-hazard operations as well as all activities involving classified removable electronic media (CREM); level 2 covers moderate risk operations; and level 1 includes general office and light laboratory activities. All level 1 activities have been restarted and 75 percent of level 2 activities have been approved to restart. Sixteen percent of level 3 activities has been approved for restart. The lab's CREM progress has been slower, but that is due to a new management approach and a reconfiguration of the CREM inventory. Thirty-four

construction projects were also suspended, but all were restarted as of September 23, 2004. Authorization for work packages to assign KSL craft has been slowed down pending startup of some operations. Craft workers have been given every opportunity to continue to work, including training and other preparatory work, as the lab phases in its resumption of operations. The shutdown also disrupted the normal year-end procurement activity; however, the lab identified \$150 million of high-priority procurements that it is working to complete before the end of the fiscal year on September 30. Of that amount, \$43 million went for in-state procurements and \$26 million was for procurements in northern New Mexico. For the entire year, LANL did approximately \$970 million in procurement activity, with about 55 percent, or \$538 million, placed with New Mexico businesses. For northern New Mexico, lab procurements amounted to approximately \$398 million, which represented a seven percent increase over FY03.

The contingent worker project, which began in March 2004, is a mechanism to convert some subcontractor employee positions to direct UC hires. Mr. Marquez stressed that the project evaluates positions, not individual employees, and the lab has worked with subcontractors to help them manage their work forces in a way to mitigate losses from job offers with UC. To date, 193 people have been offered UC positions; of those, 173 offers were accepted, four declined and 16 are pending. Out of the offers, 146 were formerly subcontractor employees, 13 were UC employees holding other positions and 14 were external hires. In addition, 71 contingent workers accepted other UC positions that were not converted positions.

Mr. Marquez provided an update on LANL's efforts to implement the findings of the Welch salary analysis. In phase 1, the lab addressed full-time regular employees as follows: 10 percent, or 670 employees, received pay adjustments on January 8, 2004, with pay retroactive to December 22, 2003. Those adjustments ranged from annual increases of \$170 to \$10,000, which cost the lab \$1.4 million. The statistical analysis underscoring these increases included many factors, such as job series, education, job code, years of relevant experience, overall relative contribution scored and time in grade. All possible gender and ethnicity combinations were considered to minimize bias. After this adjustment, the lab discovered that the four values of ORC scores used in the first phase did not represent consecutive years due to a data labeling error, and, as a result, a fifth year had to be added to the ORC scores in the salary model. This required an additional adjustment to 320 of the originally adjusted salaries as well as an adjustment to 70 salaries that had not been initially adjusted. This adjustment, made May 27, 2004, was also retroactive to December 22, 2003. Also on May 27, the lab adjusted 40 part-time and limited-term employees who had not been included in phase 1. Salary increases for these employees ranged from \$517 to \$6,932. Other adjustments were made when employees reported concerns regarding incorrect data. In total, 792 employees received Welch salary adjustments at a total cost of \$1.75 million. The demographics of the salary distribution are:

- in terms of ethnicity, 46 percent of the money (\$775,000) was distributed to Anglo employees and 54 percent (\$919,000) was distributed to minority employees, including 48 percent (\$815,000) to Hispanic employees; and

- ▶ in terms of gender, 73 percent of the money (\$1,278,000) was distributed to female employees and 27 percent (\$464,000) was distributed to males.

Following are salary averages across LANL:

- ▶ technical staff member or TSM series, average salary of 3,600 employees is \$111,000;
- ▶ structured series or SSM positions, average salary of 1,700 employees is \$69,000;
- ▶ technician series or TEC positions, average salary of 1,900 employees is \$62,000; and
- ▶ administrative series or OS/GS and AS positions, average salary of 725 employees is \$43,000.

As of September 25, 2004, the lab's total UC work force was 8,225 employees, which represented a net growth of 365 employees. There are 2,553 Hispanic UC lab employees. The TSM positions constitute almost half of the UC work force at the lab, with 10 percent, or 375, being Hispanic. Non-TSM positions make up a little more than half, or 4,338 positions; of those, 50 percent, or 2,178, are Hispanic. There are 150 employees in top management positions, 10 of which are held by Hispanics; however, of the 94 management positions filled in the SSM series in FY04, 39 were filled by Hispanics, which brings the total for Hispanic SSM managers to 136. Hispanics received 35 percent of the lab's promotions in FY04.

In community relations, Mr. Marquez reported on his recent meeting with NMHU regents and President Aragon, at which the university team presented a very good proposal on how to leverage the recently executed memoranda of understanding. He also reported that LANL has a business advisory council that consists of a cross section of New Mexico business owners who are committed to working with the lab across three principal fronts: business standards, economic development and subcontracting opportunities.

On questions from Representative Gonzales regarding carry-over funds, Mr. Marquez explained that the lab has some no-year funds, but they are limited as to use; accounting standards tend to limit carry-over funds, e.g., in the 13 to 16 percent range. There is no carry-over on construction projects. On further questions from Representative Gonzales, Mr. Marquez said salary increases are standard except when the lab submits a market comparison proposal to DOE/NNSA. A market comparison was done last year, and LANL was given \$31 million plus \$1.7 million for salary equity raises; this year, it received about half that amount because the lab has caught up with market salaries. Raises will be given in November, but will not be retroactive to October 1 as they were last year.

Representative Rodella raised questions about the contingent worker project. Mr. Marquez reported that there were approximately 1,500 employees of four subcontractors and another 1,800 employees under several task order subcontracts. The lab has assessed all positions, but the conversion is behind the originally set schedule partly because of the effect it was having on the subcontractors. There has been a net gain of 211 converted positions at the lab; of those, 33 are limited-term positions, which means they are contingent on programmatic funding being available; he expects about the same proportion of limited-term positions when others are converted. Representative Rodella discussed concerns about the one-on-one risk assessments and rumors that managers have been told they will have to fire people to show that the lab is serious about safety and security. Mr. Marquez replied that the lab took some very serious disciplinary actions involving CREM and worker safety, which has caused a lot of rumors; however, he added that the risk assessments were never intended to isolate employees or provide a means to summarily fire them. The purpose was to either provide training or reassignment for employees found lacking. Representative Rodella also expressed concerns about the contingent worker project resulting in salary inequities between contingent workers and long-term UC employees. She noted that in some cases, contingent workers were hired in at salaries higher than those of employees who had been at the lab for 10 to 15 years and who were required to train the new employees. Asked about the annual salary increase, Mr. Marquez said the lab would hold back some of its salary funding to fix the compaction issue and provide for reclassifications, but the average increase would be about two percent. The lab will maintain the four bands for payment of health care costs; UC funds 82 percent of health care costs.

★ Representative Rodella requested more information about the Welch report at the December meeting with the California delegation and asked for the attendance of Mr. Marquez and Admiral Nanos at the meeting.

On questions from Representative Salazar, Mr. Marquez said the lab is trying to catch up on its procurements for the fiscal year, because of the delay caused by the shutdown. It has used about \$100 million of its \$150 million budget, and the question is whether it will lose the remaining \$50 million. On further questions, Mr. Marquez replied that NNSA uses a five-year budget plan that has milestones and breakdowns; the danger is underperformance and the lab must meet its deliverables. The lab thinks it can recover and deliver in the next fiscal year on its federal money, and it will work hard to convince its nondefense customers that the lab can do the work. Representative Salazar then initiated a discussion on new organizational changes in the role of operations director.

★ Representative Salazar asked for a better breakdown of the lab's salary series.

Representative Rodella inquired about whistleblower protection. Mr. Marquez answered that LANL has a process and there are multiple avenues for whistleblowers to use, including reporting directly to DOE and UC. If a complaint concerns Admiral Nanos or Mr. Marquez, it is filed with UC. The university comes under the provisions of the California Whistleblower Protection Act and Mr. Marquez is the "triage manager" for the UC program at LANL. Two years ago, there was an inspector general's investigation. There is a steady stream of complaints

that range from alleging waste, fraud or abuse; employee treatment; subcontractors; and security. Out of 80 cases, about 43 have been dealt with. Ten complaints concern people who objected to their terminations. Regarding whistleblowers, there is a retaliation officer in the human resources office and UC audits the lab, which is required to report certain complaints to the auditor or the vice president of UC. He opined that the lab needs to work on manager training and early intervention.

Senator Griego asked if the craftspeople at KSL were being given information concerning when they would restart work at the lab. Mr. Marquez said he could not personally verify that, but he was told that they were.

★ Mr. Marquez said he would find out if KSL was keeping its employees informed. Senator Griego asked for a further report at the December meeting.

On further questions by Senator Griego regarding the contract, Mr. Marquez said NNSA is sticking with its original schedule to let the contract in June of next year, which means it has to release the RFP within the next week or so. NNSA has released an acquisition plan that states strongly that UC employee benefits will be protected; however, those protections cannot be extended to subcontracts.

LANL Employment Issues, Worker Rights and Whistleblower Protection — Chuck Montano, Hispano Roundtable Spokesperson, and Tommy Hook, LANL Employee

Mr. Montano provided written testimony and a June 25, 2004 *Los Angeles Times* article about the topics under discussion. He continues to be concerned that LANL employees are unable to independently validate their computed Welch salary and that the study still contains inaccuracies and gross shortcomings. Mr. Montano advised the committee that UC settled a salary disparity class lawsuit in California at Livermore national laboratory, concluding that inherent bias rooted in the subjectivity of the performance score should be eliminated for the Livermore salary parity analysis. Mr. Montano indicated that UC continues to allow LANL to inject the same bias it eliminated in California, through the use of the lab's own subjective performance scoring methodology known as the ORC score. The newspaper article quoted him on his experience as a whistleblower at the lab, namely that he has been given no work assignments since he conducted an audit that showed as many as 35 percent of employees were not following purchasing rules. He also said his appearance before the committee two years ago had resulted in his isolation; it was not until the article was published, he said, that UC finally investigated his case. He opined that the committee should be outraged that its constituents could not come before the committee without reprisals. Mr. Montano noted that the lab has wasted millions of dollars on fighting whistleblowers. He believes that regardless of testimony by Admiral Nanos and Mr. Marquez, the system is broken and it is not any better now than it was previously. He believes the committee has been misled and that assurances have not transpired.

Mr. Montano requested the committee contact Congressman Joe Barton, chairman of the house energy commerce committee, to request that committee convene national hearings on whistleblower retaliation and abuse at LANL.

Mr. Hook, former whistleblower officer at LANL, presented written testimony on his experience as a whistleblower at the lab. He noted his lack of confidence in the UC office of the president to adequately investigate and resolve whistleblower cases and expressed his concern about the lack of independence and objectivity in the investigation. Mr. Hook also asked for the committee's support for congressional oversight hearings related to the mistreatment of LANL whistleblowers, which includes unrestrained retaliation.

★ Representative Rodella asked for a status report on new hires making more money than longer-term employees.

On questions from Representative Salazar, Mr. Montano said the Hispano roundtable did its own salary disparity study using information LANL was willing to provide. He said the disparity question is, If two people are doing the same work, are they making the same pay? Salary should be commensurate with the job performed, so if a manager becomes a mail handler, he should be paid as such.

On questions from Senator Griego, Mr. Montano said he is requesting hearings on whistleblower retaliation at LANL. He would like to see a significant, independent program in the RFP. Although they do not have access to records of the number of retaliation complaints filed, Mr. Hook said it was his opinion that there are a large number because threats and intimidation in response to criticism goes on regularly. Senator Griego asked what they expected to derive from congressional hearings that hearings before this committee will not accomplish. Mr. Montano answered that a national forum might bring the momentum to require the next contract to provide the mechanism for employees and whistleblowers to be protected in fact. Mr. Hook added that without public scrutiny at the national level, lab management will not respond.

After much discussion of the request among committee members, Representative Gonzales asked that the question be deferred until the co-chairmen could get direction from the director of the legislative council service.

LANL Community Outreach — Lillian Montoya-Rael, Office Leader, Community Relations Office

Ms. Montoya-Rael, who was recently hired, discussed the operations and goals of the community relations office, including the four key areas of concern: environment, education, quality of life and economic development/economic impact. A brief description on each of these areas are:

- ▶ environment covers technical needs of surrounding communities that LANL can assist with, e.g., water research for Espanola, traffic studies for the

newly created regional transit district or technical assistance for student interns from the Pueblo of Jemez;

- ▶ education includes community programs such as the math and science academy and science on wheels;
- ▶ quality of life includes citizenship efforts such as staff volunteer time to nonprofits, the United Way campaign and the LANL foundation; and
- ▶ economic development includes community technical assistance in grant writing, small business advocacy, assistance for potential vendors, major subcontractors' consortium and strategic partnerships with universities, regional and rural development organizations and other community organizations.

On questions from Senator Griego, Ms. Montoya-Rael said the office is taking a proactive approach to help LANL employees stand out more in their communities. The lab has reopened an office in Taos and there are offices in Espanola and Santa Fe; all have stated office hours. Senator Griego initiated a discussion of the need for communications between the lab and surrounding communities and the need for educational outreach, such as distance learning, for rural areas. Ms. Montoya-Rael noted there is a strong interest at LANL in growing the local employment pool and actively recruiting and retaining employees from surrounding areas.

★ Senator Martinez asked for information on the math and science academy and the student work program at the November meeting, including how participants are selected, how many there are and where they are employed.

Representative Wallace pointed out that the math and science academy was funded by the legislature in collaboration with the lab. She also discussed the summer and after-school work programs at the lab. Representative Salazar observed that the lab should reinstitute the town hall meetings that it used to conduct.

Speaker Lujan initiated a discussion of the tricounty transit district that was recently approved by the state transportation commission. He asked that legislators be kept apprised of its activities and its scheduled meetings. Regarding the speaker's questions concerning funding, Ms. Montoya-Rael said there are a number of models for funding, including taxing authority, but the district was given \$250,000 for its first year.

★ Representatives Gonzales and Rodella requested periodic updates from the community relations office. Ms. Montoya-Rael said her office would be providing an electronic and printed newsletter on what is going on in the lab, the surrounding communities and the region. Her office is also hoping to reduce the number of mailing lists at the lab to ensure that legislators and other elected officials are kept apprised of lab activities.

LANL Economic Development and Technology Transfer — Belinda Padilla, Program Manager, Development Office, Technology Transfer Division

Ms. Padilla presented written testimony on LANL's regional business development efforts. Her office is responsible for developing improved mechanisms for the use of laboratory technologies to stimulate new business startups, attract entrepreneurs, create job opportunities and attract businesses and capital to the region while also continuing to serve the nation as a whole. She presented several ways in which this is being achieved, including networking, entrepreneurial training, increased deal flow, development of entrepreneurial talent and industry recruiting. In addition, Ms. Padilla noted the importance of regional business infrastructure and venture capital. She contrasted 1997 and current statistics: in 1997, there were few technology startups, a weak entrepreneurial community, poor business infrastructure, only one New Mexico venture capital fund, minimal management talent, low LANL deal flow and a limited trained work force. Now, there is a growing entrepreneurial community, improved business infrastructure and 14 New Mexico venture funds.

The LANL technology transfer program participates in regional events such as the Coronado ventures forum; innovators' and industry forums; regional training workshops; and New Mexico industry associations, such as the New Mexico biotech and biomedical association and the New Mexico information technology and software association. The lab has developed personal and professional relationships with leading business schools and MBA intern alumni. Various forms of entrepreneurial training are provided, including monthly and quarterly commercialization and entrepreneurial training events. Fifty-five MBA interns have worked at the lab over the last eight years; 15 program alumni have relocated to the area. The LANL entrepreneurial leave-of-absence program, for employees who want to commercialize a lab technology, has been used by 25 employees; of those, four are still on leave and eight returned to the lab. The lab's regional business infrastructure program has assisted the Cumbres & Toltec railroad, Tour New Mexico, Siroilli institute for economic development, the Valles Caldera preserve, the Taiwan/New Mexico workshop, rural payday and the Taos business alliance. Efforts in industry recruiting and technology clusters have seen strides in HyTep, digital media and radiopharmaceuticals. There have been significant increases in the availability of venture capital in New Mexico, assisted by the state investment council's efforts. The lab has issued 49 licenses to 29 New Mexico companies; 31 of which are still active and 18 of which are considered startups. Examples of licensees include QTL Biosystems, which produces systems for the detection of biological compounds; APJet, which manufactures and sells atmospheric pressure plasma sources for material processing applications; and Radion Technologies, which provides revolutionary solutions for radioactive transport simulations. The current technology transfer program statistics include 300 clients assisted; 78 new startups assisted; 270 new start-up jobs; \$73 million in start-up external capital; 25 lab employees on entrepreneurial leave; and 2,600 training event trainees served.

Ms. Padilla said continuing and new challenges include development of management talent and a trained work force and the growth and retention of emerging regional firms. The technology transfer division will continue to work with venture capitalists to identify management teams and deal flow and will focus efforts on increasing the number and quality of

deals by expanding the scope and reach of successful programs. The division wants to reconstitute the regional advisory board; explore MBA partnerships with space and naval warfare systems command, NMSU and UNM; identify external technology maturation funds; and increase regional networking activities.

Representative Salazar pointed out that in the past, technology transfer from LANL was not allowed because it was a nuclear lab. Ms. Padilla agreed that a 1989 change in federal law allowed technology transfer, but noted that the lab did not focus on regional startups until 1997.

On questions from Representatives Gonzales and Anderson, Ms. Padilla said it takes anywhere from six months to two years to get a lab technology licensed. A lab employee on entrepreneurial leave does not receive a salary, but in the first year, a portion of benefits is paid and the employee is guaranteed an equivalent job if the employee returns; in the second year, the person pays his full share of benefits and will be treated as an internal applicant for jobs; in the third year, the person will be treated as an external applicant. As for maintaining the person's security clearance, that is up to his division if it wants to continue to pay the cost of keeping it.

On further questions from Representative Anderson, Ms. Padilla said that patents belong to UC and licensees pay royalties. If further patents develop from a patented process, the question of whether they belong to UC or the licensee depends on whether they are based on the background intellectual property.

Representative Salazar continued discussion of entrepreneurs from LANL. Ms. Padilla explained that technology transfer by lab employees is not easy. In addition to having an acceptable business plan, a lab employee must get approvals from LANL to ensure that there are no conflict of interest or sweetheart deals and there is fair competition. A LANL employee may take another employee's invention or idea and, in fact, it is often easier to do that because of the conflict-of-interest rules for the inventor.

Senator Griego said he missed references to working with local students in the presentation. Ms. Padilla said that out of the 55 MBA interns, 20 have been from New Mexico universities. Asked if her office worked with the community relations office, Ms. Padilla said they do work together, but they need to do more strategic work to design and conduct joint projects. There is an outreach coordination council that meets regularly. LANL hopes to institute a high school and undergraduate intern program for students interested in business and marketing. LANL is also working to partner with the school of business at highlands university.

Representative Wallace told the committee that the Los Alamos research park is a municipal, and not a lab, project. She reiterated her point made earlier about the efficacy of the math and science academy and lauded the legislature for its funding support of the program.

There being no further business, the committee adjourned at 3:30 p.m.